



Working With Contractors and the Management and Oversight of Service Contracts

**Contracting Officer
Representative Training**

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Service Contracting... And the Workplace



Contractor Employee

Government Employee



**What are
the
differences?**



- Works for Contractor
- Works IAW SOW/PWS
- Objectives in Contract

- Works for Govt. Supervisor
- Works IAW Job Description
- Objectives in Support Form

Using contractors in a direct employee to supervisor relationship undermines the civil service merit system.



Two Important Aspects of Acquisition and Contracting



Statutory and Regulatory Considerations

- **Basis is Federal Law and Regulation**
- **Basic Tenets that Govern the Acquisition Process**
- **Legal, Organizational, and Personal Implications**

Good Business Practices Within the Acquisition Process

- **Advance Planning for All Requirements**
- **Collaborative Development of All Requirements**
- **Long Range Contracting Strategy**
- **Improve Efficiency, Economy, Utility, and Responsiveness of Contracts**
- **Seek “Best Value” Contracts and Contracting Support**



Background

- **Significant change in receipt of contractor services**
 - **No longer employed at contractor facility**
 - **Now employed on-post and incorporated into government workforce**
- **This shift has created a series of issues**
 - **Personal services**
 - **Dealing with contractors in the workplace**
 - **Organizational conflicts of interest (OCI)**
 - **Ethical conduct of Government Personnel**



Personal Services

- **Personal services contract - a contract by its express terms, or as administered, makes the contractor personnel appear, in effect, government employees**
- **Absent specific authority the use of personal service contracts is not authorized**
 - **Exception: 5 U.S.C. 3109 allows the government to acquire the services of narrators and actors.**



Personal Services



- **FAR 37.104 descriptive elements to be used in assessing whether a proposed contact is personal in nature:**
 - **Performance on site**
 - **Government furnished equipment (GFE)**
 - **Services integral to the organization's mission**
 - **Comparable services are performed by civil service personnel**
 - **Need for services exceeds 1 year**
 - **Nature of services requires direct or indirect government direction or supervision**
- **Best way to avoid - designated contractor leader directs the work**



Dealing with Contractors in the Workplace



- **Don't treat contractor personnel as government employees:**
 - **Contractor employment is based on a contract that establishes terms and conditions of employment**
- **Examples:**
 - **Applying "59-minute" rule**
 - **Attendance at Organization Day**
- **Contractor is NOT just another employee - they represent a separate organization with its own reporting chain.**



Dealing with Contractors in the Workplace



- **Contractor personnel are NOT to perform inherently governmental functions**
- **Inherently Governmental Function - a function that is so intimately related to the public interest as to mandate the performance by government employees**
- **Two categories inherently governmental in nature:**
 - **Act of governing, i.e., the discretionary exercise of authority**
 - **Monetary transactions and entitlements**



Organizational Conflict of Interest (OCI)



- **Recognizing the potential for an OCI is essential - taking steps to avoid or mitigate any conflict or advantage**
- **Goals:**
 - **Avoid the appearance of a conflict or of wrongdoing**
 - **Assure the ability to render “impartial” advice or assistance**
 - **Obtain objective advice and assistance in the form of recommendations - not decisions**
- **How to avoid an OCI**
 - **Make OCI avoidance a contractual requirement**
 - **Create firewalls**
 - **Insist on non-disclosure agreements**



Organizational Conflict of Interest (OCI)



Can occur in a number of ways...

- **Support contractor given the opportunity to see another contractor's proprietary information**
- **Support contractor provided access to procurement sensitive information. Contractor interested in bidding for the follow-on work**
- **Contractor prepares performance work statement (PWS) and/or independent Government cost estimate (IGCE) for follow-on contract**



Ethical Conduct

- **Contractors in the work place increase likelihood of having ethical issues**
 - **Conflict of Interest Law, 18 U.S.C. 208**
 - **Procurement Integrity Act, 41 U.S.C. 423**
- **Example**
 - **“Jumping the Fence” -- leaving government service and accepting employment with contractor that is providing support services**
- **See Ethics Counselor in your servicing SJA office prior to leaving government service.**



Ethical Considerations



- **Rule: Government personnel are prohibited from soliciting or accepting any gift: (1) from a prohibited source or (2) given because of the employee's official position unless the item is:**
 - **Excluded from the definition of a gift**
 - **Falls within one of the exceptions**
- **A contractor is considered to be a prohibited source when discussing the acceptance of gifts. Problems in this area are likely to increase where government and contractor personnel are assigned to the same work area.**



Ethical Considerations



Handling of Gifts

- **A gift is anything of value except:**
 - Modest food/drink, not part of a meal (dollar value NTE \$20)
 - Items with little intrinsic value
 - Prizes from contests open to the general public
- **Exceptions: 12 available exceptions; however, an exception does not apply if the individual (government representative) solicits the gift**



Ethical Considerations



- **Gift Exceptions:**
 - **Gifts of \$20 or less (does not apply to cash) - cash is never permitted**
 - **Gifts based on a personal relationship**
- **Disposition of prohibited gifts**
 - **Return to donor**
 - **Pay the market value**
 - **When in doubt, see an Ethics Counselor in your servicing SJA office**



Emphasis on Management of Service Contracts



**Statutory: PL 107-107 - FY 02 National Defense Authorization Act
(Section 801)**

- **DoD establish mgmt structure for procurement of services comparable to procurement of products**

**Undersecretary of Defense for Acquisition, Technology & Logistics
(USD(ATL)) Implementing Guidance - 31 May 02**

- **Military Components establish oversight process for service acquisitions (for services not reviewed IAW DoDD 5000.1 or DoDI 5000.2)**

Proper Use of Non-DoD Contracts - FY 05 National Defense Authorization Act (Section 854); Policy in effect as of 1 Jan 05 per OSD Memo - 29 Oct 04 (Army guidance remains in draft with instruction to implement pending finalization)

- **TRADOC Policy** - Approval Required for ALL offloads to Non-DoD or DoD Activities

Assistant Secretary of the Army, Manpower and Reserve Affairs (ASA-M&RA) initiative supported by Secretary of the Army memorandum, "Accounting for Contract Services" dated 7 Jan 2005



Emphasis on Management of Service Contracts



Army Federal Acquisition Regulations (AFARS) Subpart 5137.5

- **Focus on development & maintenance of sound acquisition strategies**
- **Oversight of services acquisition is a shared responsibility requiring activities, contracting activities, and the Assistant Secretary of the Army for Acquisition, Logistics & Technology (ASA(ALT))**
- **Acquisition Strategy Review Requirements by Threshold, Review/Approval Authority and Turnaround (workdays):**
 - **> \$500 M (and Special Interest Acquisitions) - Deputy Assistant Secretary for Policy & Procurement, (DASA (P&P)), 45 Days**
 - **> \$100 M < \$500 M - HCAs (unless PARC delegation), PEOs & Direct Reporting PMs, 30 days**
 - **< \$100 M - Approved in accordance with TRADOC/ACA procedures, 15 - 30 days**
- **Acquisition Service Strategy Panels (ASSP), (AFARS 5137.5-5)**
 - **Acquisition Strategy Content: Requirement, Socio-Economic Implications, Funding, Source Selection Approach, Cost/Schedule/Performance Metrics**
- **Execution Reviews - Annual Reports to Decision Authority on attainment of metrics for services acquisitions greater than \$100M**
- **Consolidated Annual Reports to the Army Acquisition Executive (AAE), ASA(ALT)**



General Observations - Why Improvements are Necessary



Military, Civilian leaders/managers:

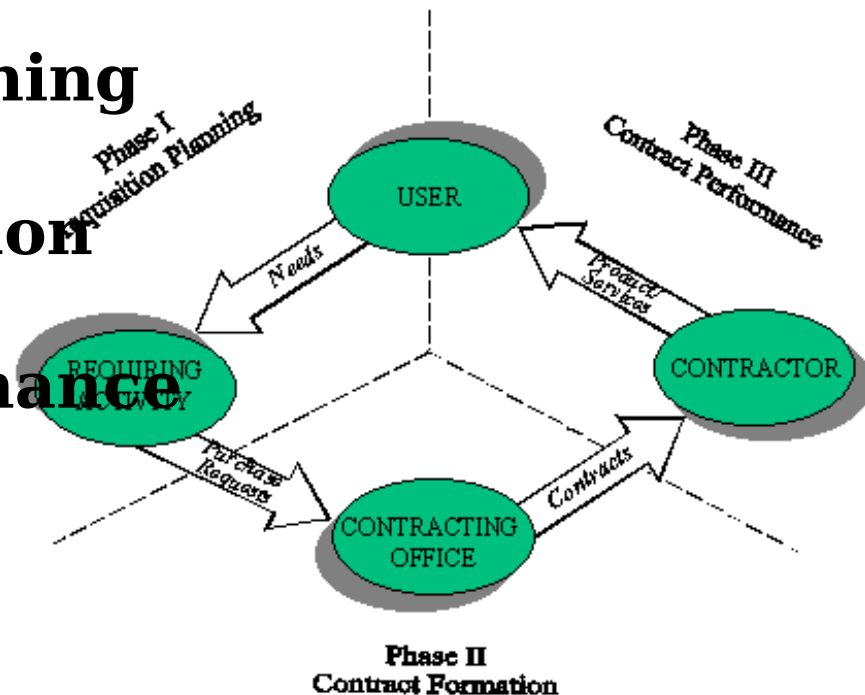
- **Lack required contract management training**
- **Must set the tone for effective management and achieving best value**
- **Must be aware of what they buy, why they are buying it, and manage expenditures for contract execution**
- **Need to create a team that understands the performance process**
- **Must know what the contract will provide for them and manage within the scope of the contract**



Understanding the Acquisition Process - A Good Business Practice

3 Phases of the Acquisition Process

- Acquisition Planning
- Contract Formation
- Contract Performance



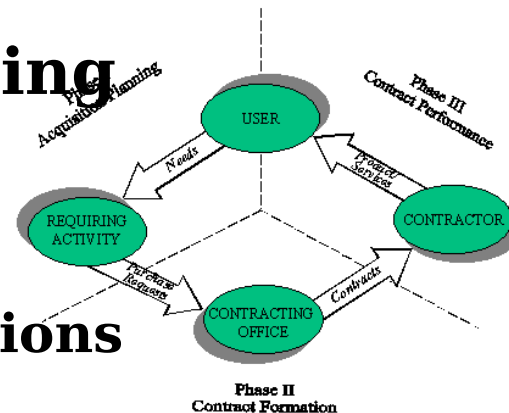


Most Significant Functions



Phase I - Acquisition Planning

- Determination of Need
- Extent of Competition
- Source Selection
- Solicitation Terms & Conditions



Focus on Business & Technical Management Approaches:

- Assess contract spending compared to return on investment
- Prepare plans, cost estimates and schedules...Identify resource constraints
- Determine priorities, perform cost/benefit analysis to prioritize objectives
- Perform Market Research/Market Surveillance
- Develop and implement a strategy for meeting ongoing and future needs
- Describe needs in terms of desired outcomes and objectives
 - Use performance-based requirements to describe problems/requirements

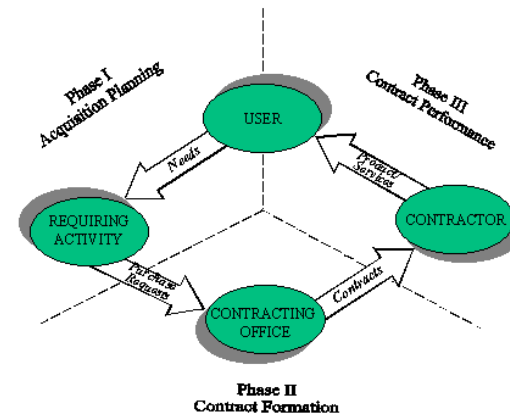


Most Significant Functions



Phase II - Contract Format

- Solicitation of Offers
 - Source Selection
 - Reviews & Approvals
 - Contract Award
-
- *Finalize CAAS Review & Approval*
 - Contracting Office review of requirements and clarification
 - Development and issuance of the solicitation
 - Industry preparation and submission of proposal
 - Contracting Office and Requiring Activity conduct evaluation of the submitted bid/proposal
 - Understand cost drivers/relationships
 - Make allowances for contractor(s) to propose a solution
 - Award of the contract(s)
 - Contracting Officer appoints Contracting Officer's

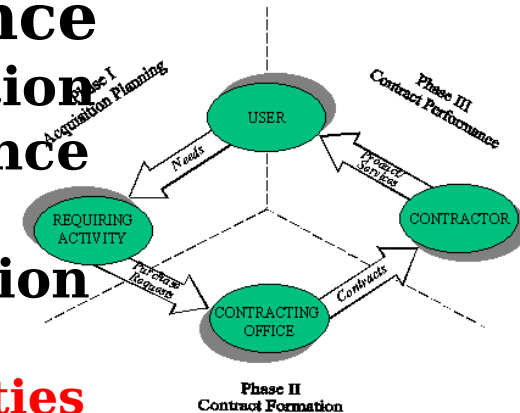




Most Significant Functions

Phase III - Contract Performance

- Initiation of Work & Modification
- Contract Performance Assurance
- Payment & Accounting
- Contract Closeout & Termination



- **Understand COR Roles & Responsibilities**
- Allow contractor to supervise contractor employees/manage performance
 - Respect contractor employer-employee relationships
 - Do NOT interfere by pressuring use of “favorite” employees, or insisting on particular personnel actions
- Establish working knowledge of contract deliverables and clear expectations consistent w/contract requirements
- Apply realistic metrics to define & measure performance, assess results--not activities



Training Resources



- **Defense Acquisition University (DAU) On-Line Training (<http://clc.dau.mil>)**
 - **Contracting for the Rest of Us** provides the non-procurement professional with a better understanding of the DoD contracting process. It is designed to introduce some of the more important aspects of the job that contracting professionals must perform, to better understand what they must go through to serve you, the customer.
 - **Performance-Based Service Acquisitions (PBSA)** Acting Undersecretary of Defense (Acquisition, Technology & Logistics) designated training as MANDATORY for ALL “requirements personnel” preparing work statements
- **Army Logistics Management College (ALMC) COR Course**



Other Resources



7 Steps to Performance-Based Contracting (www.acqnet.gov)

Step 1 - Establish an integrated team; define success.

Step 2 - Identify the “problem” to be solved and desired outcome.

Step 3 - Examine private/public sector solutions (Market Research).

Step 4 - Develop a Performance Work Statement (PWS) or Statement of Objectives (SOO). Outline “requirement,” let the contractor solve problem(s).

Step 5 - Determine how to measure and manage performance, define success determinants. Consider commercial quality standards & incentives.

Step 6 - Select the right contractor based on Best Value selection criteria (Cost/Technical tradeoffs/Incentives).

Step 7 - Assign accountability. Manage the procurement from beginning to end.

**ACA Homepage, “ACA Community” - Customer Guide
(<http://aca.saalt.army.mil/ACA.Community/index.htm>)**

ACA NR HQ, Reference Library, (<http://www.aca-nrhq.army.mil>)

ACA NBCC, Customer Help Desk and Guidance



ACA POCs & Customer Feedback



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**Interactive Customer Evaluation (ICE) Feedback:
<http://aca.saalt.army.mil/ACA/Community/index.htm>**



“Walk Away” Thoughts



Competition

- **It's the RULE not the exception**

Transparency

- **The Government focus should be on defining and assessing the quality of “product” deliverables**
- **There should be a formalized approach to selecting the source**

Integrity

- **Creating a marketplace driven by relationships creates failures in integrity**